

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability  
Order No. 98-40

in the Matter of

Mr. Kenneth C. Wilson  
Western Vineyard  
a.k.a.  
Smith Orchard Vineyard

Violation of  
Water Quality Control Plan for the North Coast Region  
  
Sonoma County

The Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby finds that:

1. Mr. Kenneth C. Wilson violated the Water Quality Control Plan for the North Coast Region (Plan). The Plan was adopted by the North Coast Regional Water Quality Control Board on December 9, 1993, approved by the State Water Resources Control Board on March 21, 1994, and the Office of Administrative Law on August 18, 1994. The North Coast Regional Water Quality Control Board can impose civil liability under Section 13350(a)(2) of the California Water Code for violation of the Plan=s prohibitions.
2. On December 11, 1997, an evidentiary hearing on this matter was held before the Regional Water Board at the Ukiah City Council Chambers, 300 Seminary Avenue, Ukiah, California. Staff described the discharge of waste earthen materials from a vineyard development located south of Stewarts Point-Skaggs Springs Road on Walbridge Road, approximately 13 miles west of Healdsburg and 10 miles northwest of Cazadero. Waste earthen materials were discharged through storm water runoff into a tributary of House Creek, House Creek, and the Wheatfield Fork of the Gualala River.

The discharger indicated he was not provided sufficient notice to prepare a rebuttal to staff=s evidence and requested a continuance of the hearing. A continuance was granted by the Regional Water Board and the matter was heard on January 21, 1998, at Regional Water Board Office located at 5550 Skylane Boulevard, Suite A, Santa Rosa, California. All testimony was considered at both evidentiary hearings and the Water Board directed the Executive Officer to issue an administrative civil liability complaint in the amount of fifty thousand dollars (\$50,000.00) to Mr. Kenneth C. Wilson. Complaint No. 98-11 was issued on January 28, 1998.

The discharger did not respond to Complaint No. 98-11. A second hearing was held on March 26, 1998 for the Regional Board to affirm, reject or modify the Complaint for Administrative Civil Liability and/or take other enforcement action in the matter of Mr. Kenneth C. Wilson. Mr. Wilson provided testimony at the evidentiary hearing and the

Regional Board affirmed Administrative Civil Liabilities Complaint No. 98-11 by adopting Administrative Civil Liabilities Order No. 98-40.

3. Mr. Wilson violated prohibitions set forth in the Water Quality Control Plan for the North Coast Region. The following discharge prohibitions have been violated:

**A. Discharge Prohibitions:**

- 2a. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
  - b. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.
4. The following facts are the basis for the violations in this matter:
    - a. Mr. Wilson is currently developing a 47-acre hillside vineyard located south of Stewarts Point-Skaggs Springs Road on Walbridge Road, approximately 13 miles west of Healdsburg and 10 miles northwest of Cazadero.
    - b. Staff inspections of the vineyard, House Creek, and the Wheatfield Fork of the Gualala River on September 23, 1996, November 27, 1996, February 25, 1997, and July 25, 1997 determined that features necessary to control the discharge of waste earthen materials from the Vineyard were not installed or were inadequate.
    - c. Regional Water Board staff advised Mr. Wilson of the potential for excess soil erosion from the Vineyard and the potential that the erosion would adversely affect waters of the State in letters dated September 15, 1993 and November 4, 1996.
    - d. In a letter to Mr. Wilson dated October 4, 1993, the NRCS made recommendations which would allow development of the Vineyard while preventing excess soil erosion. Mr. Wilson intentionally and/or negligently failed to follow NRCS recommendations and failed to install adequate erosion control facilities.
    - e. Mr. Wilson and Regional Water Board stipulated that between approximately November 18, 1996 and January 27, 1997, an estimated 1,841 cubic yards of waste earthen material discharged to House Creek, and the Wheatfield Fork of the Gualala River. The deposition of earthen materials from the Vineyard in House Creek has caused a condition of pollution by substantially filling pools, degrading spawning and rearing habitat, and smothering benthic organisms which are part of the fish rearing food chain.

**Proposed Civil Liability**

5. Section 13350(a)(2) of the California Water Code provides that the Regional Water Quality Control Board may assess civil penalties for violations of the Water Quality Control Plan for the North Coast Region. Section 13350(e)(1) provides that the Regional Water Quality Control Board may assess civil penalties in an amount not to exceed \$10 for each gallon of waste discharged. It is agreed that 1,841 cubic yards, or approximately 360,000 gallons, of waste was discharged.
6. Section 13327 describes certain factors that the Regional Water Board shall consider when determining the amount of civil liability. These factors include: the nature, circumstance, extent and gravity of the violation; the degree of toxicity of the discharge; the degree of culpability; prior history of violations; susceptibility to cleanup and voluntary cleanup efforts undertaken; economic savings; ability to pay and ability to stay in business; and such other matters as justice may require. The Regional Water Board adopts the discussion of these factors contained in the staff report.
7. Mr. Wilson is the owner of the property and he is responsible for compliance with best management practices. Mr. Wilson failed to follow NRCS recommendations and failed to install adequate erosion control facilities.
8. The issuance of an administrative civil liability order is an enforcement action by a regulatory agency, and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources section 21000 et seq.) in accordance with Title 14, California Code of Regulations, section 15321(a)(2).
9. After due notice to the discharger and interested persons, the Regional Water Board held a hearing on March 26, 1998 in Santa Rosa where it received and considered additional evidence on this matter.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13350, Administrative Civil Liability in the amount of \$50,000 is imposed upon Mr. Kenneth C. Wilson. The entire amount shall become due and payable on April 27, 1998.

**Certification**

I, Lee A. Michlin, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Administrative Civil Liabilities Order adopted by the California Regional Water Quality Control Board, North Coast Region, on March 26, 1998.

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Lee A. Michlin  
Executive Officer